

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Brandon Rettke

ORDER OF DISMISSAL

Complainant,

v.

Xpress Mailing a/k/a People for a Voice,

Respondent

This matter came before Administrative Law Judge Eric L. Lipman for a probable cause hearing on November 9, 2012.

Brandon Rettke appeared on his own behalf and without counsel. Dan Pothen, Owner, appeared on behalf of Xpress Mailing.

Brandon Rettke filed a Complaint in this matter on November 2, 2012. The Complaint asserts that Xpress Mailing made disbursements of more than \$2,000 in 2012 to produce and disseminate the "People for a Voice" brochure. This brochure urged the election of candidates other than Jason Etten to the Roseville City Council. The Complaint also asserts that notwithstanding these expenditures, Xpress Mailing did not timely file the report required by Minn. Stat. § 211A.02 or include the disclaimer required by Minn. Stat. § 211B.04 on the brochure.

By way of an order dated November 6, 2012, the Administrative Law Judge determined that Mr. Rettke had set forth enough facts in his complaint to state that a *prima facie* violation of law had occurred. The probable cause hearing was held to determine whether there was a dispute requiring resolution at an evidentiary hearing.

At the probable cause hearing it was established that Mr. Pothen received "People for a Voice" brochure from a local printing firm, "Impressive Print;" that approximately \$1,600 was charged by Xpress Mailing to Impressive Print for its services and postage to send the brochure through the mail; and that Mr. Pothen does not know the identity of the person or persons comprising "People for a Voice."

Additionally, following the receipt of Mr. Pothen's testimony, Mr. Rettke conceded that because Xpress Mailing acted solely as a mail vendor with respect to the "People for a Voice" brochure, it is not either a "candidate" or a "committee" for purposes of Minn. Stat. § 211A.02.

Based upon the Complaint and the hearing record and for the reasons set forth in the Memorandum below:

IT IS ORDERED:

1. Mr. Rettke's Complaint is **DISMISSED**.
2. Mr. Rettke may file an additional complaint against a proper party, within 30 days, without incurring an additional filing fee.

Dated: November 26, 2012

s/Eric L. Lipman

ERIC L. LIPMAN
Administrative Law Judge

NOTICE OF RECONSIDERATION AND APPEAL RIGHTS

Minnesota Statutes § 211B.34, subdivision 3, provides that the Complainant has the right to seek reconsideration of this decision on the record by the Chief Administrative Law Judge. A petition for reconsideration must be filed with the Office of Administrative Hearings within two business days after this dismissal. If the Chief Administrative Law Judge determines that the assigned Administrative Law Judge made a clear error of law and grants the petition, the Chief Administrative Law Judge will schedule the complaint for an evidentiary hearing under Minnesota Statutes § 211B.35 within five business days after granting the petition.

If the Complainant does not seek reconsideration, or if the Chief Administrative Law Judge denies a petition for reconsideration, then this order is the final decision in this matter under Minn. Stat. § 211B.36, subd. 5, and a party aggrieved by this decision may seek judicial review as provided in Minn. Stat. §§ 14.63 to 14.69

MEMORANDUM

Legal Standard

The purpose of a probable cause hearing is to determine whether there are sufficient facts in the record to believe that a violation of law has occurred as alleged in the Complaint. The Administrative Law Judge must decide whether, given the facts disclosed in the record, it is fair and reasonable to require the respondent to address the claims in the Complaint at a hearing on the merits.¹ The Office of Administrative Hearings looks to the standards governing probable cause determinations under Minn. R. Crim. P. 11.03 and by the Minnesota Supreme Court in *State v. Florence*.²

Analysis

As noted above, the Complaint asserts two violations of the Fair Campaign Practices Act – the failure to timely file a report of disbursements under Minn. Stat. § 211A.02 and the failure to include the disclaimer required by Minn. Stat. § 211B.04 on campaign material.

Because Xpress Mailing acted solely as a mail vendor with respect to the “People for a Voice” brochure, it is not either a “candidate” or a “committee” for purposes of Minn. Stat. § 211A.02. This claim is dismissed.

Mr. Rettke maintains, however, that a mail vendor like Xpress Mailing can qualify as a “person who participates in the preparation or dissemination of campaign material” under Minn. Stat. § 211B.04. He argues that Xpress Mailing has a legal duty to place a conforming disclaimer on campaign materials that it “disseminates” through the mail, even if the drafter of these materials does not include such a disclaimer.

The Administrative Law Judge does not reach this question of statutory interpretation, because even if the statute covered a company that only mailed a non-conforming brochure, it is not clear that Xpress Mailing had a duty to include a disclaimer in this particular case. This is because the disclaimer statute also includes an important exemption. Minn. Stat. § 211B.04 (f) provides:

This section does not apply to an individual or association who acts independently of any candidate, candidate's committee, political committee, or political fund and spends only from the individual's or association's own resources a sum that is less than \$2,000 in the aggregate to produce or distribute campaign material that is distributed at least seven days before the election to which the campaign material relates.

¹ *State v. Florence*, 239 N.W.2d 892, 902 (Minn. 1976).

² *Id.*; see also Black's Law Dictionary 1219 (7th ed. 1999) (defining “probable cause” as “[a] reasonable ground to suspect that a person has committed or is committing a crime”).

In this case, there is no evidence that more than \$2,000 was spent to produce and disseminate the “People for a Voice” brochure, that Xpress mailing was aware of that more than \$2,000 was expended, or that Xpress mailing coordinated dissemination of these materials with any candidate or committee. Accordingly, even if Xpress Mailing is covered by the statute because of its “dissemination” activities, on these facts, the exemption found in Minn. Stat. § 211B.04 (f) relieved it of any duty to apply a conforming disclaimer.

Because Mr. Rettke failed to establish probable cause that Xpress Mailing violated Minn. Stat. § 211B.04, dismissal of this second claim, and the Complaint, is the appropriate result.

E. L. L.